IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 7583 of 2007(C)

PETITIONER:

A.K.KHADER, ALUMTHARAYIL HOUSE,
ERATTUPETTA P.O., KOTTAYAM DISTRICT.

BY ADV. SRI.GEORGEKUTTY MATHEW

RESPONDENTS:

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1. THE ASSISTANT EXECUTIVE ENGINEER,
P.W.D., PALAI, KOTTAYAM DISTRICT.

2. THE ASSISTANT ENGINEER P.W.D.,
ERATTUPETTA, KOTTAYAM DISTRICT.

3. P.T.GEORGE, PERUNILATH HOUSE
POONJAR P.O., ERATTUPETTA, KOTTAYAM DISTRICT.

R1, R2 BY GOVT. PLEADER SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J

W.P(C).No.7583 OF 2007

Dated this the 7th day of March, 2007

JUDGMENT

Following Ext.P8 judgment, the obstruction caused by the petitioner on a piece of land abutting the highway was removed under the Highway Protection Act, 1999. He has filed this writ petition on the strength of Ext.P6, shown to have been issued by the person in-charge of the Village Officer, Erattupetta, stating that the particular item of land is Government puramboke and that on enquiry, it is understood that the Panchayat had granted permission to the petitioner to have a Milma booth there. On the strength of such certificate, the petitioner's contention is that Ext.P9 representation may be directed to be considered essentially to put him back in possession.

2. For one thing, even going by Ext.P6, the land involved in the issue is Government land. The argument on behalf of the petitioner is that because it is on the side of the river, it has to be

treated as one vested in the Panchayat in terms of the Panchayat Raj Act, 1994 and therefore, it does not continue to be Government land. Ext.P6 does not say that it is an item of land which is vested in the Panchayat. It also does not disclose that the Panchayat has ever treated it as a land belonging to it. Even if I am to read Ext.P6 as stating that it is part of the river, obviously, it does not disclose as to identity of the property about which the certificate is issued with reference to the Panchayat documents. All that could be understood from Ext.P6 is that the petitioner was granted licence by Panchayat. The mere granting of a licence to have a milma booth in Government land does not give the petitioner to continue to be in possession of the Government land merely on the strength of the licence issued by the Panchayat. That apart, the Highway Protection Act, 1999 is a statute to ensure that the highways are properly maintained and necessary actions are taken to protect the highways. In reconciling the Highway Protection Act and Panchayat Raj Act, the provisions of the Highway Protection Act obviously prevail over any provision of the Panchayat Raj Act.

Under such circumstances, the petitioner cannot make any grievance of having him removed from Government land. If Ext.P2 is relevant for any purpose, it is for the petitioner to move the appropriate authorities for relocation, subject to availability of place and concurrence of Milma authorities etc, in terms of Ext.P2. Without prejudice to such course, this writ petition is dismissed.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.